

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED

OCT 04 2005

JOHN F. GORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

CLYDE T. MAYBERRY,

Plaintiff,

v.

MIKE JOHANNES, SECRETARY OF
AGRICULTURE, ET. AL.,

Defendants.

CIVIL ACTION No. 6:05-CV-00012

ORDER AND OPINION

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiff's Motion for Jury Trial, filed on September 23, 2005. Because the Court has already granted summary judgment for the Defendants in this case, Plaintiff is not entitled to a jury trial. It is settled law that a court may enter summary judgment when the moving party is entitled to judgment as a matter of law and no factual issues remain for trial; its use does not deprive a party of any constitutional right to a jury trial. *Poller v. Columbia Broadcasting System*, 368 U.S. 464, 467 (1962); *Macklin v. City of New Orleans*, 293 F.3d 237, 241 (5th Cir. 2002); 10A Charles Alan Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure § 2714 (3d ed. 1998). Plaintiff's Motion is thus DENIED as moot.

It is so ORDERED.

The Clerk is directed to send a copy of this Order to all counsel of record.

ENTERED: *Samuel M. M...*
U.S. District Judge
October 4, 2005
Date